IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1993 OF 2004

Rashid Sattar Oomerbhoy .. Petitioner

Versus

The State of Maharashtra .. Respondents

Mr.A.N.Maniyar for petitioner

Mr.Nitin Pradhan for respondent No.2

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th October 2006.

P.C.

. Heard Mr.Maniyar for petitioner and Mr.Pradhan for original complainant, respondent No.2.

2. With the assistance of learned Counsel for both sides, I have perused the complaint which is preferred before the Metropolitan Magistrate alleging offences punishable under section 379, 380 read with 120B of I.P.C.

3. In para 3 of the complaint, items have been described which allegedly have been stolen.

4. It appears from the record that earlier investigations were directed in case No.532/M/2002 but the police filed "C" Summary report. By an order passed on 1st September 2004, the learned Magistrate 33rd Court, Ballard Pier, Mumbai after perusing the report has observed thus:- copy page 65

5. The above reproduced portion would go to show that the learned Magistrate has specifically observed that the Court Receiver contended before

him that possession of the assets has been taken on 10th September 2001. However, he has observed that merely because possession is with the Court Receiver, police cannot do anything, is something unacceptable. Police have to investigate a criminal case and while doing so, whatever are the directions of this Court are the same have to be also taken note of.

6. Once such an order was passed on 1st September 2004, present petitioner could not have filed any application and his application which was presented on 21st September 2004, has been rightly rejected by observing that it is not for the Court at the stage where the matter is, to give any particulars and list of articles. The Court has directed investigation and, therefore, the learned Magistrate was right in observing that the same cannot be interfered with or obstructed. It is for the police to go ahead and investigate the case and take such steps as are

permissible in law.

7. The apprehension of Mr.Maniyar is that the articles are not there at site and if at all they are lying there, custody of the same is that of the Court Receiver. Nothing prevents petitioner from pointing out this aspect to the police machinery when the case is being investigated and if during the course of the same police machinery comes to the premises, residential or otherwise of the present petitioner. Thus, this apprehension is not well founded.

8. Second apprehension that assuming without admitting that the petitioner has the articles in his custody and possession, upon their seizure, they will be lost to him, is also without any basis and foundation in law. Whenever articles are seized, there is always a remedy for parties who have right, title and interest therein to

apply to court and Cr.P.C. provides for adequate remedies in that behalf. Similarly, the Code confers powers on the Court which would be ultimately trying the case to make such orders with regard to custody of property seized during the course of enquiry and trial. Needless, therefore, to say that on account of such apprehension, the petitioner cannot prevent an investigation or otherwise obstruct or interfere with the same.

9. All that can be directed is that in the event, police machinery effects seizure, it would be open for petitioner before me to make such application as is permissible in law for release of the articles which have been seized and in such an application, if filed, to be disposed of within two weeks from the date of its presentation. Save and except the above directions the impugned order does not warrant any interference as it is neither vitiated by any

error apparent nor perversity. Petition dismissed. Ad-interim order vacated forthwith.

(S.C.Dharmadhikari, J)